

# **EXHIBIT 3**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Adv.Pro.No.  
08-01789(BRL)

Debtor.

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.  
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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\* \* \*

VIDEOTAPED DEPOSITION

OF PAUL K. MEYER

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TRANSCRIPT of testimony as reported  
by NANCY C. BENDISH, Certified Court Reporter,  
RMR, CRR, and Notary Public of the State of  
New York, at the offices of Baker Hostetler,  
45 Rockefeller Plaza, New York, New York, on  
Friday, July 10, 2015, commencing at 10:03 a.m.

1 the two major issues. First it was just to  
2 address the issue of initial transfers and sort  
3 of looking at how that was laid out and  
4 documented, explained by Ms. Collura. So Ms.  
5 Knox and Mr. Lietsch worked with me very  
6 carefully on that.

7 Then we turned to looking at her  
8 Exhibit 12 and then how she executed on the five  
9 tracing methodologies that she's used in her  
10 report. So we worked together going through a  
11 lot of that detail.

12 Then once we did that, we began  
13 writing our report.

14 Q. Did you or your team find any  
15 errors in Exhibit 12?

16 A. If you're asking about the  
17 allocations themselves, sort of the process of  
18 the allocations, I've raised no issues with the  
19 actual calculations. I have issues about what  
20 methodologies I believe are most appropriate for  
21 the tracing of the subsequent transfers, but as  
22 it relates to the actual calculations in Exhibit  
23 12, I have no issues with that.

24 Q. And did your team -- did you or  
25 your team check to see if the amounts listed in

1 really drive the opinion or the basis of the  
2 opinion. The other ones are background and  
3 obviously they're part of the opinion but to a  
4 lesser extent; more background.

5 Q. Can you turn to page 8 of your  
6 report and do paragraphs 22 through 24  
7 accurately summarize the conclusions in your  
8 report?

9 A. Yes, I think those are, those  
10 three paragraphs provide a very good summary of  
11 my opinions in this case.

12 Q. And do you intend to offer any  
13 opinions other than what's offered here in  
14 paragraphs 22, 23 and 24?

15 MS. ARCHER: Object to the form.

16 A. My understanding from counsel for  
17 Ascot Partners and Ascot Funds is that these  
18 would be the opinions that I'm asked to render.  
19 There may be some subopinions that sort of back  
20 into support for these, but I think that's all  
21 addressed in the remainder of the report, but  
22 these are the primary opinions and the opinions  
23 that are most important.

24 Q. And in paragraph 24, is it your  
25 opinion that LIFO and proportionality are the

1 most appropriate tracing methods to identify  
2 subsequent transfers in this case?

3 A. Yes, that's my opinion.

4 Q. And how did you determine that  
5 LIFO is an appropriate tracing methodology?

6 A. From my perspective, based on my  
7 background, which is in accounting and  
8 forensics, business, business operations, I  
9 teach at Stanford a business class to engineers  
10 who are going to run businesses, when I use all  
11 that experience over my almost 35 years and I  
12 then examine how capital partners ran their  
13 business, and particularly when they looked at  
14 their need for funds, it's explained in my  
15 report and it's well documented in Mr. Autera's  
16 deposition, that Ascot Partners would basically  
17 work hard to understand any funds coming in from  
18 new investors. They would work hard to  
19 understand any investors that were going to ask  
20 for redemptions. They want any open periods at  
21 the end of a quarter.

22 And so in that process they would  
23 understand -- and then they would understand  
24 fees for fund management, and then they would  
25 come up with basically withdrawals that are

1 going to occur, sources that are coming in, and  
2 then in that process they then would have to  
3 determine how much they'd have to draw down or  
4 ask to be redeemed from the amounts that were  
5 held with the Madoff accounts on behalf of their  
6 investors. And this was a very consistent  
7 process.

8 And so I look at that and then  
9 when you think of that in an accounting sense  
10 you're basically looking at funds that are  
11 coming in, and those last ones coming in are  
12 coming in for a defined purpose. And so when I  
13 use my experience sort of over the 35 years,  
14 that tells me that's really a LIFO approach.

15 And so when Ms. Collura identified  
16 the five methods that she was going to put forth  
17 to the court and I looked at that and then I  
18 studied the business, I said to myself, well,  
19 that really, as relates to how this fund --  
20 these funds were run, that's a LIFO approach.  
21 And based on, if you're an accountant or  
22 business person, that's how you would look at  
23 it.

24 Q. And have you ever applied LIFO as  
25 a tracing methodology in any of your previous

1 matters?

2           A.       When we talk about tracing  
3 methodologies, although the method -- obviously  
4 Ms. Collura addresses this in her report. The  
5 LIFO really is an accounting convention for  
6 pricing inventory, but at the same time it sort  
7 of has this accounting aspect that -- where  
8 you're trying to match up with current  
9 operations with the current costs of an asset.

10                   And so I've never applied LIFO in  
11 the sense of a tracing methodology. This would  
12 be the first time, and I would tell the Court  
13 that, but I've done it. But if it's a method  
14 that's going to be proposed by Ms. Collura to  
15 use as a tracing methodology, then from my  
16 perspective, it's the most -- it's certainly one  
17 of the most appropriate, along with  
18 proportionality, is how I would look at it, from  
19 an accounting perspective. In these  
20 circumstances.

21           Q.       And between LIFO and  
22 proportionality, in your opinion which is the  
23 most appropriate?

24           A.       It's an interesting question  
25 because I pondered that, and I thought about

1 what I would tell the Court. Because I really  
2 can't make a recommendation for one over the  
3 other. I would tell the Court I think they're  
4 both appropriate. And the reason it's that way  
5 is because you can look at how Ascot Partners  
6 and then Ascot Funds, to some extent, because it  
7 sort of then becomes a subset, not in a legal  
8 sense but as I look at it.

9 The way they were run, I just  
10 described LIFO, but in that same process if you  
11 go back and look at what I said, when Mr. Autera  
12 would sit down and look at the funds coming in  
13 from new investors and the withdrawals that are  
14 going to occur and then knowing fees or costs of  
15 operations for GCC, in that process you'd get  
16 all that data, but then he also would check on  
17 any other funds on hand.

18 So in that process you really are  
19 looking at any potential source to meet the  
20 needs to, for the fees or the withdrawals. So  
21 in some respects there's also a proportionality  
22 aspect to it because you're going to then at  
23 some part in your process you're going to say,  
24 okay, I'm going to use some funds from the new  
25 investors in some respects along with some funds



1 down from Madoff to meet these commitments.

2 Because the other way you would do  
3 it is you would just basically take the new  
4 funds, the new investor funds, they'd go up to  
5 Madoff, you're just going to bring down a bigger  
6 amount.

7 So proportionality also has -- you  
8 can clearly put it in the context of how the  
9 funds were managed.

10 So I would tell the Court that  
11 really from an accounting operations perspective  
12 both those methods to me are appropriate and are  
13 certainly far superior to FIFO and the LIBR and  
14 the Restated LIBR.

15 Q. Is there a standard in the  
16 accounting industry for which you should use  
17 LIFO?

18 A. You're saying FIFO?

19 Q. No, LIFO.

20 A. LIFO. You know, LIFO in sort of  
21 this aspect, as I've mentioned, this is sort of  
22 being borrowed from an inventory accounting  
23 costing perspective and it was sort of  
24 introduced into this exercise by Ms. Collura.

25 So it's really an inventory